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EIN 20-2700121

Feb 12, 2007

Shelton C. Williams  
Williams Law Firm PC  
235 East Pine, PO Box 9440  
Missoula, Montana 59807-9440

Dear Mr. Williams

This letter is a response to the reports of Mr. Richard Bisbing and Mr. Max Houck in the matter of Jimmy Ray Bromgard v State of Montana, et al. I received copies of their reports on Jan.12, 2007.

On Jan. 22, 2007 I received a box from the Williams Law Firm via FedEx. that contained the following:

- 1- A plastic slide box that contained 98 glass microscope slides.
- 2- Four plastic photographic slide holders containing a total of 40 photographic slides.
- 3- Two sealed white mailing envelopes which are labeled in part "... hair from pillowcase #6" and "... hair from pillowcase #7" These two items are not opened.

It is noted that the microscope slides do not necessarily match the original labeling inside the lid of the box and a new sheet with labels has been added.

One of the slides labeled (CB66D1 (V) pubic combing) has been broken and is now held together with tape. Part of the hair on this slide goes under the

tape and its characteristics cannot be observed in this area. Because of loss of the mounting media not all of the hair is contained within the media. Nevertheless there are enough characteristics visible to distinguish it from the known standard of the victim.

Mr. Bisbing's report states that he did a microscopic exam of the hair from the victim's pubic combings (CB66D1) and one pubic hair from the bedroom vacuum sweepings (CB76A3) and compared them to the remaining pubic hair standard (CB67B3) of Mr. Kordonowy. He further stated that he found them to be dissimilar. After my own microscopic exam, I agree with Mr. Bisbing. However one hair does not constitute a standard for comparison purposes. As Mr. Bisbing stated so well in his report (paragraph at the bottom of page 6 and continuing onto page 7), "...no two hairs are exactly the same in every detail (identical)" and "...it must first be determined that the characteristics exhibited by the questioned hair fit within the range of characteristics present in the known sample". (emphasis added) There is no way to establish a range with only one hair. Therefore with a microscopic exam on this sample it is not possible to say that Mr. Melnikoff's association was correct or incorrect. Mr. Bisbing's statement, on the bottom of page 8 and continuing on page 9, of exclusion does not make sense in light of his own statement about a range of characteristics.

I also did a microscopic exam/comparison of the victim's head hair standard (CB66A1-A10) with the hairs that Mr. Melnikoff had associated with Mr. Kordonowy. (CB76A11 and 12; CB76C7, C18, C23, and CB77B1 and B2). Again I agree with Mr. Bisbing (and Mr. Melnikoff) that these hairs are dissimilar to the victim's standard.

Note: there are actually two hair slides labeled CB76C23. Neither of these hairs is similar to the victim's standard.

Mr. Bisbing also comments on four photographic slides (WLF 608474, 608475, 608476 and 608501-1). It is noted that there is no photographic slide labeled 608501-1 and the slide Mr. Bisbing is referring to is actually 608502-1. These are multiple copies of the same photo with the photographic slide now labeled WLF 608502-1 being the slide that is in the plastic sleeve labeled State's Exhibit 26. This photographic slide shows two hairs which are on the two stages of a comparison microscope. The photographic slide is labeled above each hair to show its origin. Mr. Bisbing is correct that the photo is labeled on one half CB76A4 and that the microscope slide labeled CB76A4 only has animal hair. Mr. Melnikoff's

notes (WLF209311) for A4 also has head hair lined out and "dog or cat hair" written in. However the photographic slide does in fact show only a comparison of human hair so it must be mislabeled. Transposing a number is similar to Mr. Bisbing writing the wrong number in his report and failing to note there are two slides CB76C23. (I also observed that the lab notes-WLF608529-which describe the photo are also mislabeled.)

The trial testimony indicates that one half of the photographic slide shows a head hair removed from the vacuuming of the bedroom (and the photo appears to be a head hair) but there is no way to now determine which hair slide it is. It is probably A11 or A12 (and definitely not A4) which Mr. Melnikoff had associated with Mr. Kordonowy.

In Mr. Bisbing's first paragraph of his opinions he talks about the care needed to preserve evidence and to secure that evidence "...in order not to leave the investigation with suspicions that evidence has been intentionally discarded in order to prevent re-analysis." Mr. Bisbing knows, or should know, that evidence is returned to the requesting agency and not retained by the laboratory. The care and preservation of that evidence is completely outside the control of the laboratory. Loss of evidence would not cause any competent investigator to cast suspicion upon the lab but only on the property control procedures of the original requesting agency.

Mr. Bisbing attacks Mr. Melnikoff for ignoring the advice given during FBI training. I took the class in 1982 and was not advised to avoid the use of probabilities. We were told what literature was available and to make our own decision on how to testify. We were taught that our own experience was most important and that is what Mr. Melnikoff was doing. (I also noted that Mr. Melnikoff clarified that he was talking about the number of comparisons he had done. It appears Mr. Bisbing was not given that information.)

I also reviewed the report of Mr. Houck and have the following observations:

Mr. Houck apparently did not review the additional pubic hair standards of Mr. Bromgard which were contained in the slide box he received. I believe it is necessary to review those additional standards to make a more definitive comparison.

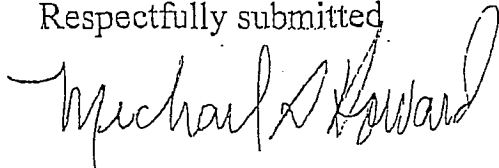
Mr. Houck states in substance that whenever there is evidence of serious misconduct or gross negligence an external audit is necessary. I would agree

with that concept; however there has been no showing of either of those conditions in this case. As mentioned, Mr. Melnikoff's error was in not totally understanding the use of statistics and multiplying the one in one hundred times the one in one hundred.

Further review of defense exhibit "Appellate Court Reviews of Hair Examiners' Testimony" reveals there were other hair examiners around the country using statistics. In addition the FBI had an examiner who stated that although hair is not a positive identification (as did Mr. Melnikoff) the "chances were almost nonexistent that the hairs found on the body originated from anyone other than [defendant]." Another FBI examiner testified that even though hair is not a positive means of identification he had done "...in excess of 25,000 hair examinations and I have yet to find either a head hair or pubic hair that matches my own." and "What it does say is that hairs are somewhat unique" These are a much stronger statements than 1 in 10,000. This review of testimony shows that Mr. Melnikoff's statements were neither serious misconduct nor gross negligence.

In his report Mr. Bisbing also denounces Mr. Melnikoff (page 9) for not following "good scientific method, good laboratory practice, and generally acceptable procedures for forensic hair comparisons..." (Mr. Houck makes a similar denouncement.) Actually it seems that Mr. Melnikoff followed the same method and procedures he learned from the FBI. The state of Montana as well as other states had not yet adopted ASCLD guidelines and did not necessarily have written protocols, policies for lab notes, proficiency testing, verification, technical review of findings, or monitoring of testimony. Mr. Melnikoff is being attacked for not following procedures that had yet to be adopted in Montana and other labs (including Oregon) around the country in 1987.

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Michael A. Howard". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael A Howard  
Forensic Scientist

JAN 09 2007

*FORENSIC ANALYSIS P.C.*  
*Michael A Howard*  
*Forensic Scientist*

115 Elm St. #1  
La Grande, OR. 97850

Phone/FAX 541-962-0706  
EIN 20-2700121

DATE: December 19, 2006

1. My name is Michael Howard and I am filing this report on behalf of the defendant in the case of Jimmy Bromgard v. State of Montana et al.

I started with the forensic services of the Oregon State Police in 1975 and I retired in 1999. Since then I established my own company doing forensic consultation.

Prior to joining OSP I worked in a clinical pathology lab at Oregon Health and Sciences University. (It was called University of Oregon Medical School at that time.) I was a medical technologist and had passed the examination to be a registered Medical Technologist with the American Society of Clinical Pathologists.

During my tenure with the Oregon State Police I received in-service training from experienced hair examiners. I also attended the hair and fiber class given by the FBI.

I attended the two week class on semen identification sponsored by the Serological Research Institute (SERI) in Emeryville, CA.

For further classes and training see the attached résumé.

2. I have testified or given a deposition in the following cases in the last four years:
  - o June 2002 – State of Oregon v. Leslie Simpkins (testified twice)
  - o November 2002 – State of Washington v. Brian Eggleston
  - o December 2002 – State of Oregon v. Ralph Goul
  - o September 2003 – State of Oregon v. Debra Stamper
  - o October 2003 – State of Washington v. Bruce Casaway
  - o August 2004 – State of Oregon v. Rashan Brown
  - o October 2004 – Estate of Jeremy Shellbe v. City of West Linn et al
  - o October 2004 – State of Oregon v. Lawrence Gillooly
  - o February/March 2005 – State of Idaho v. Sarah Johnson

- o April 2005 – Arnold Melnikoff v. WSP (employment hearing)
- o July 2005 – State of Washington v. Franklin Dela Cruz
- o September 2005 – United States v. Jose Maldonado Toscano
- o April 2006 – State of Oregon v. Satya Krishra Dasa
- o April 2006 – State of Oregon v. Brock Canady

3. I have not authored any publications in the last 10 years.
4. I was retained by Mr. Shelton C. Williams to review the forensic evidence and to assist in this case. My fee for these services is \$150/hour plus expenses. This includes travel time, consultation, evidence examination and court testimony.
5. I received or had in my possession the following items for review in this case and to assist in reaching any conclusions:
  1. Pleadings
  2. Parties' responses to discovery without the attachments
  3. Parties' disclosure documents
  4. Order dated 11/2/93 in State v. Bromgard
  5. Crime lab file numbered 8000 - 8362 regarding Bromgard matter
  6. Document Numbers 13099-13100 and 13194-13202
  7. Appellate review of hair testimony exhibit
  8. Partial trial transcripts from State v. Bromgard
  9. Partial transcript from the WSP v Melknioff hearing which is the testimony of Dr. Larry Howard
  10. Dr. Howard's letter to Rocky Treppizi
  11. Dr. Howard's vitae
  12. Forensic Science Handbook by Saferstein edition one
  13. pages 189-200 from the Seventh Edition of Criminalistics by Saferstein
  14. 2003 Laboratory Accreditation Manual from the American Society of Crime Laboratory Directors
  15. ASCLD/LAB Newsletter from March 2000
  16. Evidential Value of Hair Examination (chapter 7) from The Forensic Examination of Human Hair by Robertson
  17. Copy of appellate court decision Paxson v State
  18. Copy of Louisiana Supreme Court decision State v Huckaby
  19. Depositions taken in this matter to date October 12, 2006
  20. Billings PD's file numbered 4000 – 4242
  21. DNA reports
    - a. Blake's report #1
    - b. Blake's report #2
    - c. Hutchinson's report
  22. Peer Review Report
  23. Statements by Peer Review committee members
    - a. R. Bisbing



- b. H. Deadman
  - c. M. Houck
  - d. W. Rowe
  - 24. A. Melnikoff's statement to Washington State Patrol
  - 25. A. Melnikoff's deposition taken in Melnikoff v. Washington State Patrol
  - 26. A. Melnikoff's trial testimony in State of Montana v. Kordonowy
  - 27. Julie Long's trial testimony in State of Montana v Kordonowy
  - 28. Deposition of Julie Long
  - 29. Correction page to Deposition of Julie Lone
  - 30. A. Melnikoff's trial testimony in State of Montana v. Bauer
  - 31. Parties' responses to discovery without the attachments exchanged since 7/15/05
  - 32. Depositions Exhibits Nos. 41-78, numbered 950665 – 951263
  - 33. Crime lab file regarding Mr. Kordonowy, lab number 89-234 and numbered 608471 through 608538-713
  - 34. The hair and fiber training manual I received while attending the class at the FBI.
6. On October 19, 2006 I received a sealed box via FedEx which contained the following:
- 1. A sealed microscope slide box labeled in part "box # 1" which contained 99 microscope slides with material mounted on them. All of the slides were labeled with letters and numbers to identify them.
  - 2. A sealed microscope slide box labeled in part "box # 2" which contained 64 microscope slides with material mounted on them. All of the slides were labeled with letters and numbers to identify them.
  - 3. A sealed manila envelope which contained 20 photograph slides.

The following microscope slides were examined for this report:

- 1. slides labeled CA16A1 to CA16A19 which are reported to be head hair standards from Jimmy Bromgard
- 2. slides labeled CA16B1 to CA16B13 which are reported to be pubic hair standards from Jimmy Bromgard
- 3. slides labeled CA20A1 to CA20A17 which are reported to be additional pubic hair standards from Jimmy Bromgard
- 4. slides labeled CA17A1 to CA17A7 which are reported to be head hair standards from Linda Tokarski
- 5. slide labeled CA18A6 which is reported to be a hair removed from a blanket in this case

6. slide labeled CA18A7 which is reported to be a hair removed from a blanket in this case
7. slide labeled CA18A20 which is reported to be a hair removed from a blanket in this case
8. slide labeled CA16-D which is reported to be a hair from the pubic combing of Jimmy Bromgard

Note: The mounting media has partially evaporated on most slides, with large air bubbles present. Not all hairs are completely contained in the media.

Note: The original pubic hair standard from Mr. Bromgard-CA16B1-B13-was not sufficient for a complete microscopic examination. It is necessary to use the additional submitted standard-CA20A1-A17.

Note: The head hair standard of Mr. Bromgard is a minimum number of hairs. However this is also typical of what the requesting agency would usually submit in a case in Oregon.

Note: The head hair standard of L. Tokarski is not sufficient for a through microscopic examination.

After microscopic examination and comparison I have reached the following conclusions:

The hair on the slide labeled CA18A6 is a caucasian head hair. The microscopic characteristics of this hair fall within the range of characteristics exhibited by the standard of Jimmy Bromgard and he could be the source of this hair. The characteristics of this hair are outside the range of Linda Tokarski.

The hairs on the slides labeled CA18A7 and CA18A20 are caucasian pubic hairs. The microscopic characteristics of these hairs fall within the range of characteristics exhibited by the standard of Jimmy Bromgard and he could be the source of these hairs.

Note: The hair labeled CA18A20 is shorter and therefore does not have as many characteristics.

The hair on the standard labeled CA16-D is a caucasian pubic hair. The microscopic characteristics of this hair fall within the range of characteristics exhibited by the standard of Jimmy Bromgard and he could be the source of this hair.

It should be noted that though the comparison of the microscopic characteristics is positive (an association is made), hair comparisons do not provide an absolute identification of an individual.



After receipt, this evidence was within my possession, retained at Intermountain Forensic Laboratory's secured facility or in the small evidence safe in the locked office of Forensic Analysis P.C. It was initialed, resealed and returned via UPS on October 31, 2006.

I have also formed the following opinions regarding matters in this case:

I agree that finding a head hair and a pubic hair that "match" their respective standards from an individual are not mutually exclusive events and you cannot multiply the one in one-hundred by the one in one-hundred to get a probability match of one in ten-thousand. In my review of the testimony I see no evidence that Mr. Melnikoff was fabricating or withholding any evidence. His use of a statistical probability appears to be an honest mistake as is demonstrated by his example of throwing dice. This testimony shows that he did not understand the use of statistics and it is a mistake anyone not trained in this field could make. It is certainly no more egregious than the statistics provided by Mr. Gaudette in his testimony in Minnesota (State v Carlson 1978). Mr. Melnikoff's testimony is that the hair association is positive with regards to the microscopic characteristics but that it is NOT an absolute identification. He testified that he knew hair was not an absolute identification (trial transcript page 258) even before he took the FBI course. At no point did he testify the Mr. Bromgard could be the only source for the hair.

To find two hairs (pubic and head) that have microscopic characteristics that "match" their respective submitted standards is much stronger evidence than finding just one hair. In the section of the Forensic Science Handbook titled "The Forensic Identification and Association of Human Hair" it states "when certain, do not permit yourself to be shaken in that opinion." Therefore the testimony regarding this evidence would be much stronger and it is part of the examiner's job to explain the significance of the comparisons. As noted in the interviews of the peer review committee, several individuals were asked if they provided information about things that were not in their report and the response was that this was common.

The report generated by Mr. Melnikoff in 1987 was in keeping with reports that were being done by hair examiners. It lists the items examined, states the test (microscopic examination), and lists the result. This is the same format that is being used today as demonstrated by the Dec.17, 2002 report of Karen Lanning of the FBI. Ms. Lanning's use of a microscopic examination with a comparison microscope was exactly what Mr. Melnikoff used for his comparisons. This is the procedure that would be used today if a hair comparison were being done.

At the time Mr. Melnikoff wrote the report I had been a forensic scientist for 12 years and had become acquainted with him through our professional organization. He had a reputation as a knowledgeable and very capable forensic scientist. Mr. Bisbing's statement supports this idea and that a problem with testimony about

hair would not reflect upon Mr. Melnikoff's abilities or expertise in other types of evidence. "Hair evidence is a very difficult—to testify about" (page 16).

Mr. Melnikoff has also given several papers at the Northwest Association of Forensic Scientists meetings and was proficient in several fields including trace evidence and chemistry. His reputation was such that he was elected president of this association a second time. He was chairman of the ethics committee. He was also voted to be a life member. This is for someone who is in good standing and has made contributions to the forensic association.

The peer review report states that the "testimony is contrary to the consensus practice as it existed in 1987" (paragraph 3) and "contains egregious misstatements"...and "is completely contrary to generally accepted scientific principles" (paragraph 1).

However Mr. Bisbing, one of the reviewers, states that it "was not unusual during that time frame either" (page 7), "I have on a – on a – I think a few occasions brought up these numbers..." (page 13), and "...I don't think we know how many people would have testified with probabilities or not and so forth." (page 15). Dr. Deadman also states "Well, it's – it, it was generally an approach that, that, that is not used as far as I'm aware, by, uh, uh by many individuals, uh, other than, perhaps if they're asked at trial if there are ways of producing a, a probability" (page 8).

These reviewers are saying that, although it is not a common practice, statistics were being used in the court by examiners other than Mr. Melnikoff. The articles by Mr. Barry Gaudette (1974, 1975, and 1978) were originally written to provide a "ballpark" estimate of the probabilities of matching hair. These articles appeared in a peer review journal-Journal of Forensic Sciences-and were testified to by Mr. Gaudette. He did not write anything that said his studies were not to be used in testimony. Dr. Howard, who was a friend of Mr. Gaudette, testified that he was not told that the statistics were never intended for courtroom testimony. If in fact Mr. Gaudette said that they were not to be used (in a personal conversation to one of the peer review individuals) it does not inform anyone who was not privileged to that conversation of his belief. Furthermore in chapter 7 "Evidential Value of Hair Examination" from the book Forensic Examination of Human Hair which was published in 1999, Mr. Gaudette states "This should be followed by an estimate of the average value of forensic hair comparison evidence. This can be based either on personal experience or on some of the published studies described in section 7.5." Thus, 12 years after Mr. Melnikoff testified Mr. Gaudette is still referring to his own studies from 1974 and 1975 which are included in that section of the book.

When I started in the crime laboratory in Oregon and began training as a hair examiner the director of the laboratory system was using statistics in his hair

testimony. He had provided written information to the District Attorney that the odds on his comparison for matching an individual were better than 1:800,000. (However, I do not believe anyone else in the OSP lab system was using his statistics.) As noted by Dr. Howard in his testimony and in *Paxton v State* (1981) 159 Ga.App. 175 282 S.E. 2d 912 statistics were being used for hair comparison testimony in the state of Georgia and that number was 1:100.

I attended the FBI class in 1982 and was taught that the best basis for testimony was our own experience through case-work. Mr. Melnikoff had taken this course in 1975 and had years of casework to add to this basic training. Our class was also advised of the papers by Mr. Gaudette and given those references so we would know what other people in the field may be doing.

In paragraph 4 of the peer review it states "Based on the post conviction DNA testing carried out in this case, we now know that none of the questioned hairs could have come from Mr. Bromgard." This is an apparent misunderstanding of the DNA result and how it applies to the hair comparison. It doesn't. The DNA result applies only to the sperm source and has nothing whatsoever to do with the hair comparison. It does not preclude Mr. Bromgard from being in the room nor does it mean that the microscopic characteristics of the unknown hairs could not match the characteristics of Mr. Bromgard. The peer reviewers seem to have missed this essential scientific point.

I do not agree with the opinion expressed in paragraph 5 of the report "...then it is reasonable to assume that he has made many other misattributions." Even if an examiner made an incorrect comparison (which I do not concede happened in this case) it does not mean he or she has "made many other misattributions" in 700 comparisons. This statement makes a giant leap which has no evidence to support it. In fact the article "Correlation of Microscopic and Mitochondrial DNA Hair Comparisons" by Max Houck (one of the peer review individuals in this case) and Bruce Budowle, which was published in the Journal of Forensic Science in September 2002, states:

"Thus, in those rare instances where the same microscopic characteristics are exhibited in hairs from different individuals, the appropriate interpretation for the microscopic comparison is association."

In layman terms, this language means that if the microscopic characteristics of the unknown hair are within the range of microscopic characteristics of a standard sample from an individual then it is a "positive match" even if the unknown hair does not come from that individual.

It is also noted in the article that of 80 hairs that were microscopically associated by the FBI examiners, nine of these comparisons were excluded by mtDNA analysis. Since this DNA comparison is done directly on the hair it is different than the DNA analysis done in the Bromgard case. It does in fact rule out the

person as being the source of the hair. If you apply the same reasoning as in paragraphs 4 and 5 of the peer review report, these FBI examiners have made many other "misattributions". However this reasoning is in conflict with the above statement from the article.

Hair comparisons have always been a subjective analysis and examiners do not always agree on the result. For this reason the problem of quality assurance has never really been solved. There is no way to "quantify" the characteristics seen in hair. Each hair is distinct. To develop a "set" for every examiner that is the same is not possible. This makes it impossible to compare the competence of an examiner in one state to an examiner in another unless the same set of hairs is circulated to everyone. There is not an accredited supplier of hair samples for quality assurance testing in the United States even today.

Several of the peer review individuals indicate the best way to determine if someone is correct in their comparison is to have it reviewed. Mr. Bisbing states "The new S.W.G.M.A.T. guidelines that are coming out here as we speak, uh, are, um-uh, suggest that to be very important..." This statement is made in Jan. 2003 which is 16 years after Mr. Melnikoff's testimony. The March 2000 ASCLD/LAB newsletter states on page 2 that verification is NOT (emphasis added) an accreditation requirement. The ASCLD Accreditation Manual for 2003 still did not require verification for accreditation of a laboratory. In a verbal conversation with one of the ASCLD inspectors in December of 2006, I was advised verification of a comparison is still not required for ASCLD accreditation.

In summary, the testimony of Mr. Melnikoff is not outside the realm of what some other criminalists were saying in 1989. Mr. Gaudette's original papers were published almost 33 years ago and since then there have been other papers published concerning hair comparison and statistics. None of these have totally refuted the work of Mr. Gaudette. The "ballpark" estimate he generated for the probabilities of matching hair are still being referred to in scientific books. One is the Forensic Examination of Human Hair-published in 1999 and another is the seventh edition of Criminalistics by Richard Saferstein. (A footnote in chapter 8 on page 196 of Saferstein's book reports that a 1990 study by Wickenheiser and Hepworth supports the findings of Mr. Gaudette and Mr. Keeping. That study also notes the 1:4500 number is very conservative.) Mr. Gaudette's 1974 study even suggests that finding two dissimilar hairs that "match" may be on the order of "somewhat less than 1/4500 times 1/4500". This is the same statistical approach that Mr. Melnikoff took. Obviously the scientific community did not drum Mr. Gaudette out of its ranks for his statistics and testimony. He was still involved in international committees concerning hair.

In response to items in the Plaintiff's Complaint filed in this case I have noted the following:

Complaint para. 20 listed under FACTS is incorrect. The conclusions in Mr. Melnikoff's report are not false. They are the opinion of a qualified hair examiner after examination of the evidence. Opinions based on legitimate examination do not constitute fabrication of evidence. This is in fact what is required of a criminalist in the performance of his duty. It is to examine evidence, report the results, and form opinions. That opinion is then subject to examination in court just as happened in this case.

I do not agree with the statements listed in Complaint para. 21. I believe the hair is consistent with Mr. Bromgard and thus has probative value with the weight to be decided by the jury. This certainly does not lead to a false report and is not exculpatory evidence. The statistics do have a basis in science as demonstrated by the papers of Mr. Gaudette and the confirming study of Mr. Wickenheiser and Mr. Hepworth. Many of the statements in the pleading are based on the erroneous assumption that Mr. Melnikoff did not actually believe the microscopic characteristics of the unknown hairs matched the microscopic characteristics of the standard of Mr. Bromgard.

Complaint para. 54 of the pleadings claims that Mr. Melnikoff was "woefully unqualified" to become director of the state crime lab. This is not true, especially in the context of 1973. There were no national standards or recommendations on the qualifications for someone to become the head of a crime lab. Mr. Melnikoff had both a Bachelor of Science and a Master of Science degree. At that time he also had three years of laboratory experience. In 1973 the state of Oregon had a director with only a Bachelor of Science degree and whose background was a police officer. He was replaced by a person who did not even have a college degree. So someone with Mr. Melnikoff's credentials would have been qualified to be director in a number of laboratory systems. The state of Oregon, which established a crime lab in 1939, did not hire someone with forensic experience until 1978. Many of the criminalists hired today come into the system without forensic experience.

Complaint para. 74 says "This failure to train and supervise Melnikoff was so deficient that it encouraged and/or permitted Melnikoff to report false serology results and to suppress exculpatory data as he did in the case." This appears to be a misstatement that is meant to shine additional unfavorable light on Mr. Greely and Mr. Melnikoff as Mr. Melnikoff never generated ANY serology report in this case.

Another issue that was raised in the peer review committee statements was the problem of Mr. Melnikoff keeping up with the current literature. This has always been a problem in state crime laboratory systems. There is not enough time or personnel to allow for extra reading or research. The budgets as approved by the legislature do not allow enough resources to even handle the existing caseload. There is always a backlog of pending cases that the laboratory administrators are trying to manage. The literature review must be done on "your own time" which



was usually coffee break or lunch and it is very difficult to keep up with everything.

I have also reviewed the serology reports generated by Julie Long that are associated with the Paul Kordonowy case. I do not agree with the part of her report that attributes the "A" secretor substance to the bacteria present. To the best of my knowledge and with research, I could not find anything in the literature to support that statement.

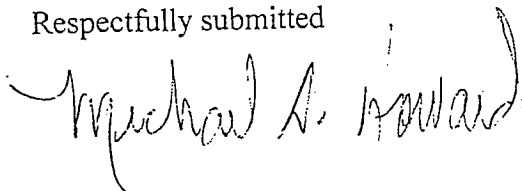
The remainder of her two reports (dated August 7, 1989 and October 19, 1989) states the results of her examinations in a fair and scientific manner. Both Bergh and Kordonowy are type O secretors and could be the source of the "H" substance. She clearly states in both reports that Kordonowy could NOT (emphasis added) be the source of the "A" substance if this is from a semen donor.

Note: In the October 19, 1989 report, there is also a discrepancy in the typed report verses the handwritten notes. The notes say "Both Kordonowy and Berg are ABO type O (secretors) and could be the source..." whereas the typed report states "would be the source..."

After reading her reports I do not find any bias toward Mr. Kordonowy. She excludes him from donating the "A" secretor substance which is foreign to Bergh and may be attributed to a semen donor. (She does mistakenly attribute this to possibly being from bacteria but this has no bias toward Mr. Kordonowy.) Again, she clearly states the correct scientific principal that the "H" secretor substance could come from any of the three people that had secretor typing done. Mr. Kordonowy is not named as the source nor is he eliminated. This is the only statement that any criminalist could make and Mrs. Long has made that correct statement. To say that this report is biased does not show a clear understanding of the scientific principals involved.

These opinions are based on the information that I had at the time of this report. It is possible that with additional information the opinions could be modified.

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Michael A. Howard". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael A Howard  
Forensic Scientist